

License Law

AS AMENDED THROUGH AUGUST 2003

§1430. Short title

This Chapter shall be known and may be cited as the "Louisiana Real Estate License Law."

Added by Acts 1983, No. 268, § 1.

§1431. Definitions

As used in this Chapter the following words have the meaning ascribed to them in this Section unless the context clearly indicates otherwise:

- (1) "Associate broker" means a person who holds a broker's license and who is exclusively affiliated with and sponsored by another licensed real estate broker to participate in any activity described in this Section.
- (2) "Commission" means the Louisiana Real Estate Commission.
- (3) "Franchise agreement" means an agreement whereby one party, the franchisor, authorizes a real estate broker, the franchisee, to use registered trademarks or other advertising tools to create a common identity among several brokers nationally or regionally for marketing purposes.
- (4) "Individual real estate broker" means an individual person licensed as a real estate broker and does not mean a licensed corporation, limited liability company, or partnership licensed as a real estate broker.
- (5) "Qualifying broker" means the sponsoring broker for a licensed corporation, limited liability company, or partnership and is the individual real estate broker designated by a licensed corporation, limited liability company, or partnership, by resolution, as its representative in all matters relating to its real estate business activities in Louisiana and in administrative and regulatory matters before the commission.
- (6) "Real estate" shall mean and include condominiums and leaseholds, as well as any other interest in land, with the exceptions of oil, gas and other minerals and whether the real estate is situated in this state or elsewhere.
- (7) "Real estate activity" means any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company, association, or corporation, foreign or domestic, whether pursuant to a power of attorney or otherwise, for a fee, commission, or other valuable consideration, or with the intention,

in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

- (a) Sells, exchanges, purchases, manages, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of real estate.
 - (b) Offers or attempts or agrees to negotiate the sale, exchange, purchase, management, rental, or leasing of real estate.
 - (c) Lists or offers or attempts or agrees to list for sale or lease any real estate or the improvements thereon.
 - (d) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or the improvements thereon.
 - (e) Advertises or holds himself, itself, or themselves out as engaged in the business of selling, exchanging, purchasing, managing, renting, or leasing real estate.
 - (f) Assists or directs in the procuring of prospects or the negotiation or closing of any transaction, other than mortgage financing, which results or is calculated to result in the sale, exchange, managing, leasing, or renting of any real estate, other than a provider of information, ideas, and materials to guide homeowners in the sale of their own property.
 - (g) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.
 - (h) Sells or attempts to sell or offers or attempts to negotiate the sale of any business whose assets include real estate or leases of real estate.
 - (i) Lists or offers or attempts or agrees to list for sale any business whose assets include real estate or leases of real estate.
- (8) "Real estate salesperson" means a person, other than an associate broker, sponsored by a licensed real estate broker to participate in any activity described in this Section.
- (9) "Timeshare developer" means an individual, partnership, limited liability company, corporation, or other legal entity, or the successor or assignee thereof, who creates a timeshare plan or who is in the business of making sales of timeshare interests which it owns or purports to own.
- (10) "Timeshare interest salesperson" means a person who directly sells or offers to sell any timeshare interest.

- (11) "Timeshare registrant" means timeshare interest salespersons or timeshare developers registered by the commission.
- (12) "Real estate school" includes any place or institution certified by the commission which is open to the public for the instruction or training of individuals to engage in the selling of real estate.
- (13) "Sponsoring broker" means any individual real estate broker who sponsors associate brokers or real estate salespersons who participate in any activity described in this Section.
- (14) "Real estate continuing education vendor" means any school, place, individual, or institution certified by the Louisiana Real Estate Commission which offers courses or seminars in real estate and related subjects to fulfill continuing education requirements for license or certificate renewal purposes.
- (15) "Licensee" means any person who has been issued a license by the commission to participate in any activity described in this Section.
- (16) "Active licensee" means any currently licensed person whose license has not been transferred to inactive status and who is authorized to act in the capacity of a real estate broker or salesperson as provided for in this Chapter.
- (17) "Inactive licensee" means any currently licensed person whose license has been transferred to inactive status and who is not authorized to act in the capacity of a real estate broker or salesperson as provided for in this Chapter.
- (18) "Property manager" means one who, for a fee, commission, or other valuable consideration, manages real estate, including the collection of rents, supervision of property maintenance, and accounting for fees received for another.
- (19) Repealed by Acts 1995, No. 1207, § 2.
- (20) "Real estate transaction" means the selling, offering for sale, buying, offering to buy, soliciting for prospective purchasers, managing, offering to manage, leasing, offering to lease, renting, or offering to rent any real estate or improvements thereon, or any business or other entity whose assets include real estate or leases of real estate.
- (21) "Seller" means the transferor in a real estate transaction, and includes an owner who lists real estate with an agent, whether or not a transfer results, or who receives an offer to purchase or lease real estate property of which he is the owner from an agent on behalf of another. "Seller" includes a lessor.
- (22) "Client" means one who engages the professional advice and services of a licensee as his agent and whose interests are protected by the specific duties and loyalties imposed by that relationship.

(23) "Agent" means a licensee acting under the provisions of this Chapter in a real estate transaction.

(24) "Subagent" means a licensee, other than a listing agent or a buyer's agent, who acts in cooperation with a listing agent in a real estate transaction.

(25) "Listing agent" means a licensee who has obtained a listing of real estate to act as an agent for compensation.

(26) "Buyer's agent" means a licensee who is employed by and represents only the buyer in a real estate transaction, regardless of whether such agent's compensation is paid by the buyer directly or by the seller through a commission split with the listing agent.

(27) "Buyer" means the transferee in a real estate transaction, and includes a person who executes an offer to purchase or lease real estate from a seller, whether alone or through an agent, or who seeks the services of an agent with the object of entering into a real estate transaction. "Buyer" includes a lessee.

(28) "Commingling" means putting personal funds and funds belonging to other persons in one mass or mixing the funds together so they cannot be identified or differentiated.

(29) "Dealing in options" means a person, firm, partnership, limited liability company, association, or corporation directly or indirectly taking, obtaining, or using an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing said real property or interests therein to another or others, whether or not said option is in his name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of such real property in interest.

(30) "Listing agreement" means a written document signed by all owners of real estate or their authorized attorney in fact authorizing a broker to offer or advertise real estate described in such document for sale or lease on specified terms for a defined period of time.

(31) "Property management" means the marketing, leasing, or overall management of real property for others for a fee, commission, compensation, or other valuable consideration.

(32) "Broker" or "Real estate broker" means a licensed real estate broker performing activities as an individual real estate broker, a sponsoring broker or designated qualifying broker, or a corporation, partnership, or limited liability company which has been granted a real estate license through a designated qualifying broker.

(33) "Mold" means any form of multicellular fungi that live on plant or animal matter and in indoor or outdoor environments. Types of mold often found in water-damaged

building materials include but are not limited to cladosporium, penicillium, alternaria, aspergillus, fuarim, trichoderma, memnoniella, mucor, and strachybotrys chartarum.

Acts, 1978, No. 514, § 1. Amended by Acts 1979, No. 404, § 1; Acts 1981, No. 309, § 1; Acts 1983, No. 270, § 1; Acts 1983, No. 380, § 1; Acts 1983, No. 381, §1; Acts 1983, No. 552, § 2; Acts 1986, No. 841, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1990, No. 893, § 1; Acts 1991, No. 354, § 1, eff. Jan. 1, 1992; Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1, Acts 2003, No. 1123, §1.

§1432. Louisiana Real Estate Commission; qualifications; terms of office

A. The Louisiana Real Estate Commission is hereby created. The commission shall consist of nine members appointed by the governor. Two members shall be appointed from the First Supreme Court District and one member shall be appointed from each of the remaining five districts. Two members shall be appointed at large by the governor. Each appointment by the governor shall be submitted to the Senate for confirmation.

B. (1) Effective the second Monday in January 1992, appointees to the Louisiana Real Estate Commission shall serve the following staggered terms:

(a) Three members shall be appointed for a two-year term.

(b) Three members shall be appointed for a four-year term.

(c) Three members shall be appointed for a six-year term.

(2) Upon expiration of the terms provided in Paragraph (1) of this Subsection, all appointments shall be for a six-year term. No commissioner shall serve more than one six-year term.

C. Members of the commission shall be citizens and qualified electors of this state. Each member shall have actively engaged in the real estate business as a broker for at least five years next preceding the date of appointment.

D. A vacancy caused by any reason except the expiration of the term shall be filled by appointment by the governor for the remainder of the unexpired term.

E. The governor may remove any member of the commission for cause.

Acts 1978, No. 514, § 1. Amended by Acts 1980, No. 730, § 1, eff. July 29, 1980; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1991, No. 436, § 1.

§1433. Officers; quorum; meetings

A. The commission shall elect from its members a chairman and a secretary and shall select a vice-chairman to serve in the absence of the chairman.

B. (1) Five members of the commission shall constitute a quorum for all business. The commission shall meet quarterly or more often if necessary.

(2) Said commission shall be limited to two regularly scheduled meetings per month. Additional meetings may be called upon application of three members.

C. Members of the Louisiana Real Estate Commission shall be compensated at a rate of not more than fifty dollars a day for each meeting or for attending to commission business, however, a member attending two meetings on the same day shall not be compensated for more than one meeting on that day. Members shall also be reimbursed for their actual expenses covering travel, meals, lodging and other incidental expenses incurred while attending commission meetings or attending to commission business.

Acts 1978, No. 514, § 1; Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

§1434. Domicile

The domicile of the commission shall be in the city of Baton Rouge.

Acts 1978, No. 514, § 1.

§1435. Powers of commission

A. The commission shall have the full power and authority to:

(1) Regulate the issuance of real estate licenses, registrations, and certificates.

(2) To censure licensees, registrants, and certificate holders.

(3) Suspend or revoke licenses, registrations, and certificates.

(4) Impose additional continuing education requirements on licensees, registrants, or certificate holders.

B. The commission shall adopt a seal by which it shall authenticate its proceedings.

C. The commission may:

(1) Adopt all necessary rules and bylaws for the enforcement of this Chapter;

(2) Require any satisfactory proof it may desire in reference to the honesty, truthfulness, reputation, and knowledge of any applicant for a real estate broker, or salesperson's license or registration as a timeshare interest salesperson or of any of the officers or members of any such applicant prior to the issuance of any license, or registration; and

(3) Promulgate and enforce rules and regulations relative to applications for licenses or registrations necessary to administer and enforce the provisions of this Chapter.

D. In addition to its general powers as above provided by way of extension and not of limitation, the commission is expressly granted the right to require any real estate broker or timeshare developer registrant to keep records as specified in this Chapter of all real estate or timeshare transactions. The commission is authorized to inspect such records at the offices of those licensees or registrants by its duly authorized representatives between the hours of 9:00 A.M. and 4:00 P.M., Saturdays, Sundays, and legal holidays excluded, and to subpoena any of the said records.

E. The commission shall have the right to subpoena any licensee, registrant, or witness for the purpose of holding any hearing or in furtherance of an authorized investigation. Failure by a licensee or registrant to comply with a subpoena or subpoena duces tecum shall be punishable by the commission as provided under the provisions of R.S. 37:1455.

F. The commission may also require that all real estate brokers and timeshare developer registrants shall deposit all monies or things of value received on behalf of clients in a separate banking account or accounts in a legally chartered financial institution. Said monies so received are not to be commingled with the personal funds of such licensees or registrants.

G. The commission shall appoint an executive director, who shall have such powers, authority, and responsibilities as the commission shall delegate. The commission shall establish the salary of the executive director, and may remove the executive director for cause.

H. The commission shall establish, through the adoption and promulgation of rules and regulations in accordance with the Administrative Procedure Act, procedures by which a determination may be made as to whom a disputed escrow deposit should be released.

Acts 1978, No. 514, § 1. Amended by Acts 1980, No. 387, § 1; Acts 1983, No. 552, § 2; Acts 1984, No. 943, § 2, eff. July 20, 1984; Acts 1986, No. 837, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1991, No. 642, § 1; Acts 1995, No. 1207, § 1; Acts 1999, No. 628, § 1.

§1436. Licensing and registration required

A. Licenses issued by the commission shall be classed as active and inactive.

B. It shall be unlawful for any person or entity, directly or indirectly, to engage in or conduct, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity, of a real estate broker or real estate salesperson within the state without first obtaining a license as such broker or salesperson, and be classed as an active licensee, as provided in this Chapter, unless he is exempted from obtaining a license as specified herein.

C. It shall be unlawful for any person or entity, directly or indirectly, to engage in or conduct, or to advertise to hold himself or itself out as engaging in or conducting the business, or acting in the capacity of a timeshare interest salesperson or timeshare developer without first obtaining a registration as such a timeshare interest salesperson or timeshare developer, as provided in this Chapter, unless he is exempted from obtaining a registration as specified therein.

D. Any person, corporation, partnership, limited liability company, or other entity who, directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs any single act described herein, whether as a part of a transaction, or as an entire transaction, shall be deemed a licensee or registrant within the meaning of this Chapter. The commission of a single act by such a person or entity required to be licensed or registered under this Chapter and not so licensed or registered shall constitute a violation of the provisions of this Chapter.

Acts 1978, No. 514, § 1. Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1997, No. 845, § 1.

§1437. Application for license

A. Any person desiring to act as a real estate broker or as a real estate salesperson, or any corporation, partnership, limited liability company, or any other legal entity desiring to conduct real estate activity in this state, shall file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

- (1) The name and address of the applicant and the name under which the applicant intends to conduct business.
- (2) The place or places, including the city or village with the street and street number, if any, where the business is to be conducted.
- (3) Such other information as the commission shall require.

B. (1) Licenses shall be granted only to persons or entities who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate activities requiring licensing in this state in such a manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission.

(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction, such untrustworthiness of the applicant, and the conviction, may in itself be sufficient grounds for refusal of a license.

(3) When an applicant has made a false statement of material fact on his application, such false statement may in itself be sufficient grounds for refusal of a license.

(4) Grounds for suspension or revocation of a real estate license in Louisiana or any other jurisdiction, or the previous suspension or revocation, of a real estate license in Louisiana or any other jurisdiction shall also be grounds for refusal to grant a license.

C. (1) No individual real estate broker or salesperson's license shall be issued to any person who has not attained the age of eighteen years. No individual real estate broker or salesperson's license shall be issued to any person who is not a high school graduate or the holder of a certificate of high school equivalency.

(2) (a) All applicants for an initial individual real estate broker's license shall have first served actively for two years as a real estate salesperson and shall show evidence satisfactory to the commission that they have satisfactorily completed at least one hundred fifty hours or its equivalent of instruction in real estate courses approved by the commission prior to licensure. Satisfactory completion includes passage of an examination on course contents.

(b) At least thirty hours of the broker educational requirement shall be obtained in coursework emphasizing broker responsibilities.

(c) Each person obtaining a real estate broker's license shall complete thirty additional hours within the first full calendar year of licensure, which additional hours shall satisfy the required continuing education requirements for that year. Such hours shall be in subjects required by the commission including but not limited to laws, rules and regulations changes, finance, and the handling of funds.

NOTE: The provisions of Section 1437(C)(2)(a), (b), and (c), as amended, Acts 1999, No. 629, § 1, become effective on January 1, 2000.

(3) The commission, through its education division, may accept real estate related credit hours from an accredited college or university as partial substitution of the broker licensing educational requirement.

(4) The commission shall have the authority to accept experience in the real estate business or related fields as credit toward fulfillment of the education requirements set forth herein.

(5) (a) All applicants for a salesperson's license shall show evidence satisfactory to the commission that they have completed ninety hours or its equivalent of instruction in real estate coursework approved by the commission prior to licensure. Satisfactory completion includes passage of an examination on course contents.

(b) Each person obtaining a salesperson's license shall complete thirty additional hours within the first full calendar year of licensure, which additional hours shall satisfy the

required continuing education requirements for that year. Such hours shall be in subjects required by the commission including but not limited to laws, rules and regulations changes, finance, and the handling of funds.

NOTE: The provisions of Section 1437(C)(5)(a) and (b), as amended, Acts 1999, No. 629, §1, become effective on January 1, 2000.

(6) (a) (i) In addition to the other education requirements set forth in this Chapter, the license of an individual real estate broker or salesperson shall not be renewed unless the broker or salesperson shall furnish proof of completion of eight hours per year of continuing education pertaining to matters, including but not limited to laws, rules and regulations relative to licensing, appraisal, finance, taxes, zoning, environmental quality, and the United States Department of Housing and Urban Development.

Beginning January 1, 2001, four of the required annual continuing education hours shall be in subjects specified by the commission.

(ii) The commission shall promulgate rules and regulations necessary to implement the continuing education requirement and may mandate the completion of courses in specific real estate related subjects. However, such rules and regulations shall not require passage of an examination in order to satisfy the continuing education requirement.

(iii) The commission shall offer courses sufficient to satisfy the continuing education requirement at no charge to the licensee.

NOTE: The provisions of Section 1437(C)(6)(a)(i), (ii) and (iii), as amended, Acts 1999, No. 629, §1, become effective on January 1, 2000.

(b) Repealed by Acts 1995, No. 1207, § 2.

(c) Repealed by Acts 1999, No. 452, § 3.

D. Every applicant for a license shall submit a sworn statement attesting that he has knowledge of and understands the provisions of the Fair Housing Act of 1968 and the Louisiana Equal Housing Opportunity Act¹, and any amendments thereto or any successor legislation subsequently following, and that he shall not induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into an area, subdivision, or neighborhood of a person or persons of a particular race, color, religion, or national origin.

E. A nonresident may obtain a broker's or salesperson's license and engage in the real estate business in this state under conditions prescribed by the commission.

Acts 1978, No. 514, § 1. Amended by Acts 1978, No. 658, § 1; Acts 1979, No. 404, § 1; Acts 1980, No. 492, § 1; Acts 1981, No. 309, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1991, No. 642, § 1; Acts 1993, No. 886, § 1; Acts 1995, No. 1207, § 1; Acts 1997, No. 220, § 1; Acts 1997, No. 845, § 1; Acts 1999, No. 629, § 1; eff. January 1, 2000; Acts 2001, No. 924, §1.

In subsection D, 42 U.S.C.A. § 3601 et seq., and R.S. 51:2601 et seq., respectfully (as of July 1, 1999, the "Louisiana Open Housing Act" is changed to the "Louisiana Equal Housing Opportunity Act" by Acts 1997, No. 1141, eff. July 1, 1999).

§1437.1. Timeshare registration

A. Any person or entity desiring to engage directly in the business of selling timeshare interests must register with the commission.

B. (1) (a) The application for registration shall be in such form as may be required by the commission so that only persons who have a good reputation for honesty, trustworthiness, and integrity may be so registered.

(b) The commission shall approve or deny such applications for registration within forty-five days from receipt of the application by the commission.

(2) When an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or a crime involving moral turpitude in any court of competent jurisdiction, such untrustworthiness of the applicant, and the conviction, may in itself be sufficient grounds for refusal of a timeshare interest sales registration.

(3) When an applicant has made a false statement of material fact on his application, such false statement may in itself be sufficient grounds for refusal of a timeshare interest sales registration.

(4) Grounds for suspension or revocation of a registration, or real estate license, or the previous revocation of a real estate license or registration in Louisiana or any other jurisdiction, shall be grounds for refusal to grant a timeshare interest sales registration.

(5) No timeshare registration shall be issued to any person who has not attained the age of eighteen years. No timeshare interest sales registration shall be issued to any person who is not a high school graduate or the holder of a certificate of high school equivalency.

C. The provisions of this Section with regard to registering as timeshare interest salespersons do not apply to a licensed real estate broker or salesperson.

D. Notwithstanding any other provisions of law, a timeshare developer may not avoid liability to timeshare purchasers for the acts of timeshare interest salespersons or licensees on the basis that the timeshare interest salesperson is merely an independent contractor.

E. Every nondeveloper timeshare sales registrant shall file and maintain with the Louisiana Real Estate Commission a bond issued by a surety company authorized to do business in this state in the amount of ten thousand dollars. This bond shall be in favor of the state for the use, benefit, and indemnity of any person who suffers any damage or loss

as a result of the sale registrant's unfair or deceptive practice or other violation of law in connection with the sale offer or solicitation to sell of a timeshare interest.

F. Except for the provisions contained in R.S. 9:1131.12, the changes and additions affected¹ by Act No. 999 of the 1985 Regular Session of the Legislature shall not apply to any timeshare project which has filed and been approved to operate as a timeshare project by the Louisiana Real Estate Commission on or before June 1, 1985, and for which protection under the federal bankruptcy law has not been filed and whose developer has not been suspended by the Louisiana Real Estate Commission, and which, if approved prior to July 20, 1984, has been actively and consistently marketed as a timeshare project.

Added by Acts 1983, No. 552, § 2. Amended by Acts 1984, No. 943, § 2, eff. July 20, 1984; Acts 1985, No. 999, §§ 2, 4; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

¹In subsection F, language is as appears in enrolled bill (Acts 1989, No. 655).

§1437.2: CORPORATIONS; LIMITED LIABILITY COMPANIES; PARTNERSHIPS; REAL ESTATE BROKERS' LICENSES

- A. Any corporation, limited liability company, or partnership formed under the laws of this state or any foreign corporation, limited liability company, or partnership which has been granted a certificate of authority to do business in this state may be granted a real estate broker's license by the commission upon application and compliance with the requirements of this Chapter.
- B. Every application for a corporate, limited liability company, or partnership real estate broker's license shall be submitted by a licensed individual real estate broker who has been chosen by the corporation, limited liability company, or partnership as its qualifying broker. An individual real estate broker may serve as a qualifying broker for more than one corporation, limited liability company, or partnership.
- C. Upon dissolution, a corporation, limited liability company, or partnership shall return the license of the designated qualifying broker, and the license of every sponsored licensee to the commission within ten days of the dissolution.
- D. Upon termination of a qualifying broker's affiliation with a corporation, limited liability company, or partnership for any reason, the corporation, limited liability company, or partnership shall notify the commission and designate a new qualifying broker within five working days. A corporation, limited liability company, or partnership may designate a new qualifying broker at any time.

- E. Upon the merger or consolidation with another corporation, limited liability company, or partnership the corporation, limited liability company, or partnership shall notify the commission not later than five working days following the effective date of the merger or consolidation.

F. Sections F through I repealed by Acts 1999, No. 452, §3.

Added by Acts 1983, No. 380, §1. Amended by Acts 1989, No. 655, §1, eff. Jan.1, 1990; Acts 1995, No. 1207, §1; Acts 1997, No. 845, §1.

§1437.3: INACTIVE LICENSE

NOTE: The Provisions of Section 1437.3 (E) (1) and (3) as amended, Acts 1999, No. 629, §1 is effective January 1, 2000.

- A. Effective January 1, 1990, an inactive license status shall be established.
- B. Any licensee in good standing with the commission may elect to place his license in an inactive license status with the commission provided he applies for a transfer to an inactive status and remits the applicable fees as set forth in the Chapter. Former licensees may, within the six-month delinquency period and upon payment of appropriate renewal and inactive license transfer fees, transfer their license to inactive status.
- C. During the period the license is in inactive status, the licensee shall be prohibited from engaging in any activity requiring a real estate license. The licensee shall be required to renew the inactive license on a yearly basis by filing the required renewal application and paying the annual inactive renewal fees as specified in this Chapter.
- D. The licensee may request transfer from inactive status to active status any any time, provided the inactive license has been renewed as provided for in this Chapter and is current at the time the request is received at the commission.
- E. An inactive licensee will not be required to fulfill the continuing education requirement established for active licensees on a yearly basis; however, upon application to return to active license status the licensee must have completed the continuing education specified in the following Paragraphs:

(1) Licensees remaining in the inactive status from one to five years shall complete the number number of hours of continuing education specified

for the period of inactivity indicated below:

- a. One to three years of inactive status - twenty hours of continuing education
- b. Three to five years of inactive status - forty hours of continuing education.

(2) If the licensee remains in the inactive status for two to five renewal periods, he must complete a four-hour course covering Louisiana real estate license law and commission rules and regulations as part of the hours specified in Paragraph (1) of this Subsection to be eligible to return to active license status. This required four-hour course must be completed within one year prior to the date of the transfer of the license to the active status.

(3) The licensee may remain in the inactive license status indefinitely, provided he complies with the yearly inactive renewal procedures. Licensees remaining on inactive status for longer than a five-year period will be required to complete a maximum of eighty hours of approved continuing education within the five-year period immediately preceding the request to return to active license status. Such continuing education shall include a four-hour Louisiana real estate license law and commission rules and regulations course which must be completed within one year prior to the date of the transfer of the license to the active status. However, any applicant who has continued to obtain continuing education in the required areas during the period that he is in inactive status may cumulate those hours and be eligible to reactivate his license at any time.

Added by Acts 1989, No. 655, §1, eff. Jan.1, 1990; Acts 1995, No. 1207, §1. Amended by Acts 1997, No. 845, §1; Acts 1999, No. 629, §1; eff. Jan.1, 2000

§1438: APPLICABILITY

A. The provisions of this Chapter shall not apply to:

- (1) Any person, partnership, limited liability company, association or corporation, foreign or domestic, which has not been granted a real estate license in Louisiana and in which, as owner or lessor, either individually or through an employee or representative and performs acts of ownership with reference to property owned by him, except person in the business of selling or managing timeshare interests.
- (2) The service rendered by an attorney at law on behalf of a client which may be required in the normal course of other legal representation.
- (3) A receiver, trustee in bankruptcy, administrator, executor, tutor, or civil sheriff for any parish of this state.

(4) A trustee selling under a deed of trust or a mortgage.

(5) Any individual, corporation, partnership, trust, limited liability company, joint venture or other entity which sells, exchanges, leases, or manages its own property, except persons, corporations, partnerships, trusts, limited liability companies, joint ventures and other entities who are in the business of selling timeshare interests.

(6) Any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to:

(a) Delivering a lease application, a lease, or any amendment thereof to any person.

(b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment for delivery to and made payable to a property manager or owner.

(c) Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker, including the execution of leases or rental agreements, provided the broker is responsible for the actions of his employees.

(d) Providing information about a rental unit, a lease, an application for lease, or the status of a security deposit or the payment of rent to any person.

(e) Assisting in the performance of property management functions by carrying out administrative, clerical, or maintenance tasks.

B. Repealed by Acts 1995, No. 1207, §2.

C. Repealed by Acts 1995, No. 1207, §2.

Acts 1978, No. 514, §1. Amended by Acts 1979, No. 404, §1; Acts 1984, No. 552, §2; Acts 1986, No. 835, §1; Acts 1989, No. 655, §1, eff. Jan.1, 1990; Acts 1990, No. 893, §1; Acts 1995, No. 1207, §1.

§1438.1 to 1438.4: (Blank)

These section numbers were vacated by the amendment and reenactment of Chapter 17 of Title 37 by Acts 1978, No. 514, §1. For disposition of the subject matter of these former sections of Chapter 17, See R.S. 37:1437 and R.S. 37:1440.

§1439: ISSUANCE OF LICENSE, CERTIFICATE, OR REGISTRATION

- A. Upon compliance with the provisions of this Chapter and with the rules and regulations of the commission, the commission shall issue the appropriate license, certificate, or registration and shall prescribe the form of such license, certificate, or registration.
- B. Each individual real estate broker's license and each corporation, limited liability company, or partnership real estate broker's license shall show the name and street address of the business and shall also show the mailing address of the business if it is different from the street address.
- C. Each sales or associate broker license shall show the name of the license. The license shall also show the name of the sponsoring individual real estate broker, or the name of the corporation, partnership, or limited liability company or other entity under which the license is issued. The license of each associate broker or salesperson shall be delivered or mailed to and kept in the custody and control of the individual real estate broker or designated qualifying broker by whom the associate broker or salesperson is sponsored.
- D. Each timeshare developer registration shall show the name and street address of the developer and shall also show his mailing address if it is different from the street address.
- E. Each timeshare sales registration shall show the name and residential address of the registrant and shall also show his mailing address if it is different from the residential address. Each individual timeshare sales registration shall show the name of the developer by whom the registrant is employed. The registration shall be delivered or mailed to the developer by whom the registrant is employed. The registration shall be delivered or mailed to the developer and shall be kept in the custody and control of that developer.
- F. Associate brokers, salespersons, and timeshare interest salesperson shall not conduct any activities requiring licensing or registering until their license or registration has been issued and is in the custody of their sponsoring broker or employing timeshare developer, or the sponsoring broker or employing timeshare developer has received written authorization from the commission authorizing such activity pending the issuance of the license or timeshare registration by the commission.

Acts 1978, No. 514, §1, Amended by Acts 1986, No. 670, § 1; Acts 1995, No. 1207, §1; Acts 1997, No. 845, §1, Acts 1999, No. 452, §2.

§1439.1, 1439.2: REPEALED BY ACTS 1995, NO. 1207, §2

Former R.S. 37:1439.1, enacted by Acts 1989, No. 655, §1, related to the form of licenses. Former R.S. 37:1439.2, enacted by Acts 1989, No. 655, §1 related to issuance of registrations. See, now, R.S. 37:1439.

§1440: EXAMINATION

- A. Professional competency as referred to in this Chapter shall be established by an examination prepared by or under the supervision of the commission. The examination shall be of a scope sufficient in the judgment of the commission to determine that a person is professionally competent to act as a real estate broker or salesperson. The commission shall make all necessary rules and regulations governing the time, place, and method of conducting such examinations.
- B. The examination shall consist of such technical and professional subjects relating to the real estate business as the commission shall prescribe or believe applicable in order to determine the professional competency of the applicant and to protect the interests of the public.
- C. Examinations shall be conducted, administered, and scored by either the Department of State Civil Service or by a national testing service.

Acts 1978, No. 514, §1, Amended by Acts 1980, No. 492, §1; Acts 1989, No. 655, §1, eff. Jan.1, 1990.

§1441: RETURN OF LICENSE OR REGISTRATION UPON TRANSFER OR TERMINATION

- A. When the association of an associate broker or salesperson with his sponsoring broker is terminated by either party for any reason, the sponsoring broker shall send the associate broker's or salesperson's license, by hand delivery or by certified or registered mail, to the commission within five days of such termination. No associate broker or salesperson, shall act as such, either directly or indirectly, under authority of such license after the date the license has been dispatched to the commission. Such associate broker or salesperson, upon sponsorship by another licensed broker, shall be entitle to transfer the license upon written request and payment of the required fee; however, not more than one license shall be issued to any associate broker or salesperson for the same period of time.
- B. When the association of a timeshare sales registrant with his registered developer is terminated by either party for any reason, the developer shall send the sales registration certificate, by hand delivery or certified or registered mail, to the commission within five days of such termination. Any timeshare sales registrant who wishes to begin a new business relationship with another developer shall notify the commission, in writing and by certified or registered mail, prior to beginning that business relationship. No timeshare sales registrant shall act as such, either directly or indirectly, under authority of such registration after the certificate has been dispatched to the commission. Such timeshare registrant shall, upon acceptance by a new developer, be allowed to transfer his registration to that developer upon receipt of all appropriate fees and paperwork.

C. When the association of a designated qualifying broker with a corporation, limited liability company, or partnership is terminated by either party for any reason, the following actions shall be taken:

(1) The designated qualifying broker shall notify all associate brokers and salesperson sponsored by him in writing by certified or registered mail of the termination and the effective date of the termination.

(2) Neither the licensed corporation, limited liability company, or partnership, nor any associate broker or salesperson sponsored by the terminated designated qualifying broker, shall engage in any real estate activity requiring licensing until a new qualifying broker has been designated by the corporation, limited liability company, or partnership and the designation has been reflected in the files of the commission

(3) Upon designation of a new qualifying broker, the outgoing qualifying broker shall deliver the licenses of all sponsored licensees to the new designated qualifying broker.

(4) The new designated qualifying broker shall inform all associate brokers or salespersons licensed with the corporation, limited liability company, or partnership in writing by certified or registered mail of his designation as qualifying broker and of the effective date of the designation not later than five days following the effective date of the designation.

(5) The outgoing qualifying broker shall return his license as qualifying broker for the corporation, limited liability company, or partnership to the commission within five days following the effective date of the designation of the new qualifying broker.

Acts 1978, No. 514, §1. Amended by Acts 1986, No. 839, §1; Acts 1995, No. 1207, §1; Acts 1997, No. 845, §1.

§1441.1: REPEALED BY ACTS 1995, NO. 1207, §2

Former R.S. 37:1441.1, enacted by Acts 1989, No. 655, §1, related to return and transfer of licenses of associates and salespersons upon termination of the association with the sponsoring broker.

§1442: LICENSE, CERTIFICATE, AND REGISTRATION ISSUANCE AND RENEWAL

A. Each license, certificate, or registration issued under this Chapter shall be issued for a period of one year and shall expire on December thirty-first following the date upon which it is issued. Each license, certificate, or registration shall be renewed annually. Conducting any activity authorized by the license, certificate, or registration after the expiration of the license, certificate, or registration shall

be deemed a violation of this Chapter. Licenses, certificates, or registrations not renewed by January first shall be considered expired.

- B. Any licensee or registrant who fails to renew timely may thereafter renew upon payment of the appropriate renewal and delinquent fees and upon filing of a complete renewal application. The period for delinquent renewal of an expired license or registration shall be limited to the six-month period immediately following the expiration date of the active license or registration. Failure to delinquently renew an expired license or registration during this six-month period shall result in a forfeiture of renewal rights and shall require the former licensee or registrant to apply as an initial applicant and meet all requirements of an initial applicant.
- C. Any inactive licensee who fails to renew timely may thereafter renew upon payment of the appropriate renewal fees and filing of a complete renewal application. The period for delinquent renewal of an expired delinquent inactive license will be limited to the six-month period immediately following the expiration date of the inactive license. Failure to renew delinquently an expired inactive license during the six-month period will result in the forfeiture of renewal rights and will require the former licensee to apply as an initial applicant and meet all requirements of an initial applicant.
- D. Timeshare registrants who fail to renew timely may thereafter renew within six months of the expiration of their registration upon payment of a delinquency renewal fee; however, registered developers of timeshare projects who qualify under Section 5 of Act 999 of the 1985 Regular Session of the Legislature, but who fail to renew timely shall no longer qualify under that Section.

Acts 1978, No. 514, §1. Amended by Acts 1983, No. 269, §1; Acts 1983, No. 552, §2; Acts 1986, No. 840, §1; Acts 1989, No. 655, §1, eff. Jan. 1, 1990; Acts 1995, No. 1207, §1, Acts 1999, No. 452, §2.

§1443: FEES

The Commission may charge:

(1) Initial fees for licensing or certification:

- (a) Individual real estate broker's license \$120.00
- (b) Corporate, partnership, or limited liability company real estate broker's license \$120.00
- (c) Branch office license \$45.00
- (d) Real estate salesperson's license \$45.00
- (e) School certification \$650.00

- (f) Instructor certification \$35.00
- (g) Instructor certification reexamination \$35.00
- (h) Continuing education vendor \$300.00

(2) Renewal fees for licensing or certification:

- (a) Real estate active broker's license \$70.00
- (b) Real estate inactive broker's license \$35.00
- (c) Branch office license \$45.00
- (d) Real estate active salesperson's license \$35.00
- (e) Real estate inactive salesperson's license \$35.00
- (f) School certification \$300.00
- (g) Instructor certification \$35.00
- (h) Continuing education vendor \$150.00

(3) Fees for timeshare registration:

- (a) Initial public offering statement filing fee \$500.00
- (b) Additional public offering statement filing fee \$250.00
- (c) Initial timeshare developer registration \$120.00
- (d) Timeshare developer renewal fee \$70.00
- (e) Initial timeshare interest salesperson fee \$45.00
- (f) Timeshare interest salesperson renewal fee \$35.00
- (g) Timeshare prize registration \$150.00

(4) Delinquent fees, in addition to the renewal fee, if not renewed by December thirty-first of the applicable license, registration, or certification period:

- (a) January 1 - February 15 \$25.00
- (b) February 16 - June 30 \$100.00

(5) Transfer fees:

- (a) Active status to inactive status \$45.00
- (b) Inactive status to active status \$45.00
- (c) All other transfers \$35.00

(6) Processing fee \$25.00

(7) License verification \$25.00

(8) Continuing education course registration \$15.00

Acts 1978, No. 514, § 1. Amended by Acts 1981, No. 309, § 1; Acts 1983, No. 552, § 2; Acts 1985, No. 999, § 2; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1.

§1444: BROKER, PLACE OF BUSINESS; BRANCH OFFICE LICENSE

The business address registered by a broker with the commission shall be considered as the place of business from which the broker will conduct real estate activities requiring licensing in Louisiana. If a broker conducts business from more than one place of business, a branch office license shall be required for each place of business maintained by the broker.

Acts 1978, No. 514, §1. Amended by Acts 1995, No. 1207, §1.

§1445: UNLICENSED PERSONS CANNOT RECOVER BROKERAGE CHARGES

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provision of this Chapter to other licensed brokers or licensed salespersons unless such person was duly licensed under this Chapter as a broker or salesperson prior to the time of offering to perform any such act or service or procuring any promise to contract for the payment of compensation for any such contemplated act of service.

Acts 1974, No. 514, §1. Amended by Acts 1984, o. 814, §1; Acts 1984, No. 943, §2, eff. July 20, 1984; Acts 1989, No. 655, §1, eff. Jan.1, 1990.

1445.1: REPEALED BY ACTS 1956, NO. 556, §9

The repealed section, derived from Acts 1952, No. 232, related to suspension of licenses for failure to renew. See, now, R.S. 37:1442..

§1446: COMPENSATION; INDEPENDENT CONTRACTOR STATUS OF SALESPERSONS AND ASSOCIATE BROKERS

A. No payment of a commission or compensation shall be made by any licensee or registrant to any person who has not first secured his license or registration under the provisions of this Chapter. This Subsection shall not apply to a broker who is currently licensed in his state of residence.

B. No payment of a commission or other compensation shall be made by any broker to any licensee or registrant when the paying broker has knowledge that the receiving licensee or registrant has agreed to pay or intends to pay or otherwise deliver a portion of the commission or compensation to an unlicensed person or entity.

C. Associate brokers, salespersons, and timeshare interest salespersons shall not pay or offer to pay any commission or valuable consideration for the performance of any act herein specified.

D. Payment of commission or compensation may be made to and accepted by former licensees and registrants for transactions negotiated by them while duly licensed or registered by the commission.

E. Current licensees who transfer their licenses from one broker to another broker may accept compensation from their former broker for business transactions which were instituted while still with that broker, so long as the compensation is transmitted through their current sponsoring broker.

F. Associate brokers and salespersons shall not accept a commission or other valuable consideration for the performance of any act herein specified, or for performing any act relating thereto, from any person, except their sponsoring or qualifying broker.

G. Associate brokers and salespersons may assign or direct that commissions or other compensation earned in connection with a real estate transaction be paid by their licensed sponsoring broker to an unlicensed corporation of which the associate broker or salesperson is the sole officer, director, and shareholder, or an unlicensed limited liability company of which the associate broker or salesperson is the sole manager.

H. A real estate salesperson or associate broker shall be an independent contractor of the broker with whom he is affiliated if all of the following conditions are met:

(1) The real estate salesperson or associate broker is a licensee.

(2) Substantially, all of the real estate salesperson's or associate broker's remuneration for the services performed are directly related to sales or other output rather than the number of hours worked.

(3) There is a written agreement between the real estate salesperson or associate broker and the broker that specifies that the real estate salesperson or associate broker will not be treated as an employee.

Acts 1978, No. 514, §1. Amended by Acts 1989, No. 655, §1, eff. Jan.1, 1990; Acts 1995, No. 1207, §1; Acts 1997, No. 845, §1; Acts 1999, No. 452, §2, Acts 2003, No. 321, §1.

§1447: Referral fees; interference with brokerage relationships

A.(1) It is unlawful for any person, including but not limited to a relocation company, to directly or indirectly solicit or request a referral fee or similar payment for the referral of a buyer or seller unless the person seeking the referral fee has reasonable cause.

Reasonable cause shall not exist unless:

(a) The person seeking the referral fee introduced the client to the licensee or registrant from whom the referral fee is being sought; or

(b) The person seeking the referral fee has a written contractual relationship with the licensee or registrant for a referral fee or similar payment; and

(c) The licensee or registrant has received the client referral prior to the client contracting to buy or list real estate with the licensee or registrant.

B. It is unlawful to interfere with a real estate brokerage relationship. The demand for a referral fee from a licensee or registrant when reasonable cause for payment does not exist constitutes interference with a real estate brokerage relationship. A threat by a third party to reduce, withhold, or eliminate any relocation benefits in order to generate a referral fee from a licensee or registrant when reasonable cause does not exist also constitutes interference with a brokerage relationship. Notwithstanding the foregoing, communications between an employer or its representative and an employee concerning relocation policies and benefits shall not constitute interference with a real estate brokerage relationship.

C. It is unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a licensee or registrant and a client by counseling a client or another licensee or registrant on how to terminate or amend an existing contractual relationship between a licensee or registrant and a client. Communicating a company's relocation policy or benefits to an employee or consumer shall not be considered a violation of this Subsection as long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a licensee or registrant and a client.

D. A prevailing party in any action for violations of this Section may be awarded actual damages, plus reasonable attorney fees. In addition to bringing an action in court, violations of this Section may be addressed through mediation services. Such mediation services shall include but shall not be limited to mediation through real estate entities who specifically offer programs for resolving complaints involving real estate referral fees.

Acts 2001, No. 261, §1.

§1448. Revocation or suspension of licenses

A. Any licensee whose license is suspended or revoked in accordance with this Chapter shall be deemed an unlicensed person during the period of suspension or revocation and shall be subject to the penalties prescribed for unlicensed persons, if he engages in activity requiring licensure during the period of suspension or revocation. The commission retains jurisdiction over all unlicensed persons relative to violations of and enforcement of the provisions of this Chapter.

B. The revocation or suspension of a broker's license shall automatically suspend the license of every associate broker or salesperson who is sponsored by the broker whose license was suspended or revoked. The sponsoring broker shall, within seventy-two hours of notification by the commission of the final action on the revocation or suspension of his license, return to the commission all licenses of the licensees sponsored by him.

C. A sponsoring broker shall, within seventy-two hours of notification by the commission return his license or the license of any associate broker or salesperson sponsored by him when such license has been suspended or revoked by the commission.

Acts 1978, No. 514, §1. Amended by Acts 1981, No. 309, §1; Acts 1995, No. 1207, §1; Acts 2003, No. 713, §1.

§1448.1. Repealed by acts 1995, no. 1207, §2

Former R.S. 37:1448.1, enacted by Acts 1989, No. 655, §1, related to revocation and suspension of licenses.

See, now, R.S. 37:1448.

§1448.2. Revocation or suspension of registration

A timeshare registrant will within seventy-two hours of notification by the commission of the final action on the revocation or suspension of a registration issued to a timeshare interest salesperson or a timeshare developer return such registration to the commission.

Added by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

§1449. Broker to insure provision of contract; retention of records

A. Licensees acting in the capacity of an agent or subagent, and registrants shall insure that their respective principal party signing any document in a real estate transaction is provided a copy of the document immediately after the signing of the document.

B. Licensees and registrants shall insure that persons signing any document in a real estate transaction which pertains to more than one party are provided with a copy of the completed document bearing the signatures of all parties to the transaction within five days after the final signature is affixed to the document.

C. Written agreements for the sale or management of real estate shall specify a definite expiration date which shall not be subject to qualifying terms or conditions.

D. Individual real estate brokers shall retain, readily available and properly indexed, for a period of five years, the bank statements, copies of deposit slips, and canceled checks on all escrow or trust accounts and copies of all documents which in any way pertain to real estate transactions wherein they or licensees sponsored by them have appeared in a licensing capacity. This requirement shall not be altered by the change of status of a broker to that of an associate broker or an unlicensed person, or transfer to inactive status.

E. Corporate, limited liability company, and partnership real estate brokers shall maintain, readily available and properly indexed, for a period of five years, the bank statements, copies of deposit slips, and canceled checks on all escrow or trust accounts and copies of all documents which in any way pertain to real estate transactions wherein they, their designated qualifying broker, or licensees sponsored by them have appeared in a licensing capacity. This requirement shall not be altered by the failure of the corporate, limited liability company, or partnership real estate broker to renew their license or the transfer of the license to the inactive status.

Acts 1978, No. 514, § 1. Amended by Acts 1984, No. 943, § 4, eff. July 20, 1984; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1991, No. 642, §1; Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1; Acts 2003, No. 1123, §1.

§1450. Duty of licensees, registrants, and certificate holders to report legal action pertaining to real estate activities

A. It shall be the duty of every licensee, registrant, and certificate holder to notify the commission within ten days by registered or certified mail or by hand delivery of the following actions:

(1) The rendering of a final judgment against him by a court of competent jurisdiction, the subject matter of which involves a real estate transaction in which he was acting as a licensee, registrant, or certificate holder.

(2) The institution of criminal prosecution by arrest or indictment the subject matter of which involves a real estate transaction in which he was acting as a licensee, registrant, or certificate holder.

(3) Any final conviction of him by a court of competent jurisdiction for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, theft, or any other felony, or any crime involving moral turpitude.

B. It shall be the duty of every licensee, registrant, and certificate holder who is the custodian of client funds to report the institution of bankruptcy proceedings to the commission, in writing and by registered or certified mail or hand delivery within ten days of institution of such proceedings.

(1) Bankruptcy proceedings which shall be reported include those in which the petitioner is named as a debtor, whether classified as voluntary or involuntary, personal, corporate, or partnership, or which is in any way connected with the licensee's, registrant's, or certificate holder's real estate business activities.

(2) The report to the commission shall include a listing which identifies the owner or owners of the funds, the amount of funds held, the name of the financial institution, and the number of the account in which the funds are deposited.

Acts 1978, No. 514, § 1. Amended by Acts 1981, No. 594, § 1; Acts 1983, No. 552, § 2; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1.

§1451. Death or incapacity of a real estate broker

A. In the event of the death of a sponsoring broker, any associate broker affiliated with the deceased broker or, in the absence of an associate broker, a salesperson sponsored by the deceased broker, may, after proper notification to and approval in writing by the commission, complete, carry out, and enforce any contracts to which the deceased broker was a party.

B. The associate broker or salesperson approved by the commission to complete the real estate business activities of the deceased sponsoring broker shall:

(1) Immediately notify all sponsored licensees of the death of the broker.

(2) Advise all sponsored licensees that no new contracts shall be instituted and that their licenses shall be returned to the commission.

(3) Return the licenses of the sponsored licensees to the commission within five days.

C. In the event that a deceased broker did not have any sponsored licensees, the commission may designate a broker to monitor any pending real estate transactions initiated by the deceased broker.

D. In the event of the physical or mental impairment of an individual real estate broker, the commission may appoint another individual real estate broker to complete, carry out, and enforce any contracts to which the impaired broker was a party.

E. In the event of the physical or mental impairment of a sponsoring broker, an associate broker or, in the absence of an associate broker, a salesperson sponsored by the broker may be appointed by the commission to temporarily assume the duties and responsibilities of the broker.

F. In the event of the death or physical or mental incapacity of a qualifying broker, the commission shall be immediately notified and the licensed corporation, limited liability company, or partnership shall appoint a new qualifying broker within five days.

Acts 1978, No. 514, § 1. Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1.

§1452. Repealed by acts 1989, no. 655, § 2, eff. jan. 1, 1990

§1453. Investigations

A. The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any licensee, registrant, certificate holder, or any person who assumes to act in any such capacity. Such an investigation may include inquiries and inspections of records.

B. Every licensee, registrant, and certificate holder shall cooperate fully with and answer all questions propounded by commission personnel conducting an investigation, inquiry, or records inspection.

C. Every licensee, registrant, and certificate holder shall produce any document, book, or record in his possession, or under his control, relative to any investigation, inquiry, or records inspection conducted by commission personnel.

D. The commission shall not become involved in disputes between licensees or registrants in any matter regarding the entitlement to or payment of commissions, fees, or compensation involving the sale or lease of real estate.

Acts 1978, No. 514, § 1. Amended by Acts 1983, No. 552, § 2; Acts 1986, No. 842, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1.

§1454. False information

It is unlawful for any person or his agent to file with the commission any notice, statement, or other document, required under the provisions of this Chapter which is false or contains any material misstatement of fact.

Acts 1978, No. 514, § 1. Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

§1455. Causes for censure, suspension, or revocation of license, registration, or certification

A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:

(1) Committing any act in violation of the Louisiana Real Estate License Law not specified in this Section.

- (2) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this Chapter.
- (3) Committing any act in violation of the Louisiana Timesharing Act.
- (4) Failure to account for any money coming into his possession belonging to others.
- (5) Failure to properly disburse money which belongs to others upon its coming into his possession.
- (6) Commingling the money or other property of his principals with his own.
- (7) Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal.
- (8) Representing or attempting to represent a real estate broker or real estate agency other than the licensed broker or agency listed on the real estate license issued by the commission.
- (9) Acting in the dual capacity of agent and undisclosed principal in any transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller or lessor of property that he owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent and the same is disclosed to the buyer or tenant.
- (10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property.
- (11) Offering real estate for sale or lease without the written consent of the owner or his authorized agents. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.
- (12) Offering real estate for sale or lease on terms other than those authorized by the owner or his authorized agent.
- (13) Offering any inducement to or in any way encouraging a party to a written contract involving the sale, lease, or management of real estate to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal or licensee.
- (14) Negotiating the sale, exchange, lease, or management of real estate directly with an owner or lessor of the real estate if he knows that such owner or lessor has a written outstanding contract in connection with such real estate granting an exclusive agency or an exclusive right to sell, exchange, lease, or manage the real estate to another broker.
- (15) Knowingly making any false representations to any party in a real estate transaction.

- (16) Acting for more than one party in a real estate transaction without the written acknowledgment of all parties to the transaction.
- (17) Failure by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his licensed broker any deposit money or other money or funds entrusted to him by any person dealing with him as the representative of his licensed broker or in connection with any transaction involving the sale, lease, or management of real property.
- (18) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.
- (19) Knowingly permitting a sponsored licensee to operate as an individual real estate broker.
- (20) Knowingly permitting a sponsored licensee or an employee to conduct real estate activities in violation of this Chapter.
- (21) Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.
- (22) Failure to advise all parties to a real estate transaction in writing of compensation being received from any source in connection with that real estate transaction.
- (23) Failure without just cause to surrender unto the rightful owner, upon demand, any document or instrument received by a licensee or registrant in the course of a real estate transaction.
- (24) Accepting other than cash as earnest money or good faith deposit unless that fact is communicated to the owner prior to the acceptance of the offer to purchase, and such fact is shown on the face of the purchase and sale agreement.
- (25) Failure of a licensee to inform the buyer and seller at the time an offer is presented that either party may be expected to pay certain costs such as discount points, etc. and the approximate amount of said costs.
- (26) Failure to reduce a bona fide offer to writing when a proposed purchaser requests that a written offer be submitted.
- (27) Failure to disclose to a buyer a known material defect regarding the condition of real estate of which a broker, salesperson, or timeshare interest salesperson has knowledge.
- (28) Having been finally adjudicated and found guilty for refusing, because of race, color, national origin, sex, or ethnic group, to show, sell, or rent any real estate for sale or rent to qualified purchasers or renters or for any violation of the Fair Housing Act of 1968 or

the Louisiana Equal Housing Opportunity Act¹ and/or any amendments thereto or any successor legislation subsequently following.

(29) Having been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge.

(30) Refusing to appear or testify under oath at any hearing held by the commission.

(31) Procuring a license, registration, or certificate for himself or anyone else by fraud, misrepresentation, or deceit.

(32) Failure to comply with an order or consent order issued or approved by the commission pursuant to adjudicatory proceedings.

Important Notice: Two separate Acts from the 2003 Louisiana Legislative Session were used to amend !455.A (33). As of this date, the LREC has not been notified of how this will be resolved.

(33) Engaging in real estate activity or attempting or offering to engage in real estate activity within the state during any period of suspension of a real estate license by the commission or revocation of any real estate license by the commission.

(33) Failure by a licensee to provide a buyer or seller with a written property disclosure form for sales and certain leases involving residential real property pursuant to R.S. 9:3195 et seq.

B. The commission may suspend or revoke the registration of any timeshare developer who knowingly allows any person or entity who does not have a current timeshare interest sales registration or current Louisiana real estate license to sell timeshare interests owned by the timeshare developer.

Acts 1978, No. 514, § 1. Amended by Acts 1979, No. 404, § 1; Acts 1980, No. 388, § 1; Acts 1983, No. 552, § 2; Acts 1984, No. 943, § 2, eff. July 20, 1984; Acts 1986, No. 838, § 1; Acts 1986, No. 841, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1991, No. 354, § 1, eff. Jan. 1, 1992; Acts 1995, No. 1207, § 1; Acts 1997, No. 32, § 1; Acts 1999, No. 452, § 2, Acts 2003, No. 713, § 1,

¹In par. A(28), 42 U.S.C.A. § 3601 et seq. R.S. 51:2601 et seq., the Louisiana Open Housing Act, is changed, as of July 1, 1999, to the Louisiana Equal Housing Opportunity Act, by Acts 1997, No. 1141, eff. July 1, 1999.

§1456. Notice of charges; hearing; censure, suspension, or revocation of license, registration, or certificate; criminal action

A. (1) Before censuring, suspending, or revoking any license or registration, or certification, or imposing continuing education requirements, the Louisiana Real Estate Commission shall, except for the reasons set forth in R.S. 37:1463(G), notify in writing the licensee or person registered of any charges made, at least twenty days prior to the

date set for the hearing, and shall afford him an opportunity to be heard in person or by counsel. Notice shall be satisfied by mailing a copy of the charges by certified mail to the licensee's, registrant's, or certificate holder's address on file with the commission or by commission personnel hand delivering a copy of the charges to the licensee, registrant, or certificate holder.

(2) The written notice may be served either personally on a broker or salesperson or the registered agent for a corporation, limited liability company, or partnership, or sent by registered or certified mail to the last known business address of the licensee or registered agent.

(3) If the licensee is an associate broker or a salesperson, the commission also shall inform the sponsoring broker of the specific charges against the associate broker or salesperson by sending notice thereof by registered or certified mail to the broker's last known business address.

(4) If the licensee is a corporate, partnership, or limited liability broker, the commission shall inform the designated qualifying broker and the registered agent of the specific charges against the licensee by sending notice thereof by registered or certified mail to the last known business address of the qualifying broker or the registered agent.

(5) If the licensee is a designated qualifying broker for one or more licensed corporations, limited liability companies, or partnerships, the commission shall inform each corporation, limited liability company, or partnership represented by the broker of the specific charges against the broker by sending notice thereof by registered or certified mail to the registered agent for each corporation, limited liability company, or partnership represented by the broker.

(6) The commission shall have the power to subpoena and issue subpoenas duces tecum and to bring before it any person in this state, or take testimony by deposition, in the same manner prescribed by law in judicial proceedings in the courts of this state, or to require production of any records relevant to an inquiry or hearing by the commission. Any final decision or determination of the commission shall be reviewable by the Nineteenth Judicial District Court in the parish of East Baton Rouge.

B. (1) The hearing on the charges shall be at a time and place prescribed by the commission and in accordance with the provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

(2) The commission may make findings of fact and shall deliver or mail such findings to the licensee charged with an offense under the provisions of this Part. Any finding of fact by the commission pursuant to the provisions of this Subsection shall be conclusive.

(3) The Nineteenth Judicial District Court of the state may review questions of law involved in any final decision of the commission. Any application for review made by an

aggrieved party shall be filed within thirty days after the final decision of the commission.

(4) If the court finds that the Louisiana Real Estate Commission has regularly pursued its authority and has not acted arbitrarily, it shall affirm the decision, order, or ruling of the commission. If a petition to review the final decision of the commission is filed, the case shall be specifically fixed for trial within thirty days from the filing of an answer by the commission.

C. Administrative proceedings under this Chapter before the commission are not exclusive remedies. Criminal action under the terms of this Chapter may be simultaneously instituted and maintained against the accused for any violation of this Chapter. The commission may also separately or simultaneously bring and carry on an action by injunction to restrain a licensed or unlicensed individual from further violation of any of the provisions of this Chapter, during the pendency of the criminal proceeding or proceedings before the commission and against any unlawful practice thereafter.

Act 1978, No. 514, § 1. Amended by Acts 1983, No. 552, § 2; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1997, No. 845, § 1; Acts 1999, No. 452, § 2; Acts 2003, No. 713, § 1.

§1457. Judicial proceedings

A. If an appeal is taken under R.S. 37:1456, the court shall receive the entire record of the hearing.

B. All judicial proceedings relative to actions taken by the commission shall be filed in and adjudicated by the Nineteenth District Judicial Court in the parish of East Baton Rouge.

C. Absent an agreement of counsel for all parties, no stay of enforcement of a decision issued under R.S. 37:1456 or for a violation of R.S. 37:1459, during the pendency of an appeal shall be granted unless the Nineteenth Judicial District Court finds that the applicant has established that the issuance of the stay does not threaten harm to other interested parties.

D. No stay shall be granted ex parte. The court shall schedule a hearing on the request for a stay order within ten days from filing. The decision shall be rendered within five days after the conclusion of the hearing.

E. No judicial order staying or enjoining the effectiveness or enforcement of a final decision or order of the commission in an adjudication proceeding shall be effective, or be issued to be effective, longer than one hundred twenty days from the date on which the commission's decision or order was rendered, or the date on which the court enters judgment in a proceeding for judicial review of the commission's decision or order pursuant to R.S. 49:964, whichever comes first.

Acts 1978, No. 514, § 1. Amended by Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1; Acts 2003, No. 713, §1.

§1458. Penalty

Whoever violates any of the provisions of this Chapter shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

Acts 1978, No. 514, § 1; Acts 2003, No. 713, §1.

§1459. Real estate activity; unlicensed person

A.(1) In addition to any other civil remedy or civil penalty provided for in this Chapter, the commission may issue a subpoena to any person or persons who the commission has probable cause to believe has engaged in real estate activity without a currently valid license.

(2) Subpoenas issued by the commission shall comply with the notice requirements of R.S. 49:955. These subpoenas shall be served upon the unlicensed individual personally or by any type of mailing requiring a return receipt and shall include a statement of the manner in which the unlicensed person shall be required to respond to the commission.

B. The commission may impose a civil penalty of no more than five thousand dollars upon any unlicensed person who, after a hearing or informal resolution in accordance with all provisions of this Chapter and the Administrative Procedure Act, is found to have engaged in real estate activity without the benefit of a currently valid license having been issued by the commission pursuant to the provisions of this Chapter. In addition, the commission may assess costs and attorney fees against the unlicensed person found to have been engaged in real estate activity without a current license.

C. The fact that any person engages in or performs or offers to engage in or perform any of the practices, acts, or operations set forth in R.S. 37:1431(7) is prima facie evidence that such person is engaged in the illegal practice of real estate.

D. No person engaged in real estate activity without a currently valid license shall have the right to receive any compensation for services so rendered. In addition to any other penalties imposed under R.S. 37:1455 and 1458, any person who engages in real estate activity without a license shall return any fees collected for engaging in real estate activity.

Acts 2003, No. 713, §1.

§1460. Certification and regulation of real estate schools, instructors and continuing education vendors

A. The Louisiana Real Estate Commission shall have the authority to establish rules and regulations to certify, regulate, and discipline real estate schools and instructors in the

state. The commission shall establish standards for course content including the legal, economic, mathematical, ethical considerations, and fundamentals of the real estate business.

B. The Louisiana Real Estate Commission shall have the authority to certify, regulate, and discipline real estate continuing education vendors in the state and to establish rules and regulations pertaining thereto.

C. The commission shall not certify, or accept educational hours for credit from, any real estate school or any real estate continuing education vendor in which a substantial economic interest is held by a legislator or a member of the commission, member of his immediate family, or any entity in which he directly or indirectly holds a substantial economic interest.

Acts 1978, No. 514, § 1. Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

§1461. Real estate recovery fund

A. There is created the Louisiana Real Estate Recovery Fund, hereinafter referred to as the "recovery fund." Money from the recovery fund shall be disbursed as provided in this Chapter on order of the commission as reimbursement to any person who is adjudged to have suffered monetary damages by reason of any of the following acts committed as part of any transaction involving the sale or lease of real property in this state by any real estate broker or salesperson who was licensed under the provisions of this Chapter at the time the alleged act was committed:

(1) Any violation of the Louisiana Real Estate License Law.

(2) Obtaining money or property by fraud, misrepresentation, deceit, false pretenses, artifice, trickery, or by any other act which would constitute any violation prescribed in this Chapter.

B. (1) In addition to the license fees provided for in R.S. 37:1443 and those fees provided for in R.S. 37:1464, upon initial issuance and/or renewal of every real estate broker's and real estate salesperson's license as well as any and all other types of licenses, if any, issued by the commission after January 1, 1979 and until December 31, 1980, the commission may charge each of the aforesaid licensees an amount not to exceed eight dollars per year to be deposited and included in the recovery fund, said amounts to be collectable on a two year basis.

(2) After December 31, 1980, for the initial issuance and/or renewal of each license specified herein, except a timeshare interest sales registration, the commission may levy a fee in an amount needed to provide for the reasonable administration of the recovery fund; to provide for the replacement of payments out of the recovery fund so that the minimum level as specified in Subsection C of this Section is retained subject to a credit for the interest earned by the recovery fund itself, and

(3) Further provided that all initial applicants after the first initial license period, January 1, 1979 to December 31, 1980, shall pay the same amount as that charged during the first recovery fund collection period specified herein.

(4) The accrued surplus, if any, in the recovery fund over and above the four hundred thousand dollar minimum level after payment of the administration and losses from the fund may be transferred on December 31 of each calendar year by voucher properly drawn and signed by the chairman of the commission or his designee to the research and education fund for use as specified in R.S. 37:1464.

C. The commission shall maintain a minimum level of four hundred thousand dollars for recovery and guaranty purposes. These funds may be invested by the commission under the same limitations as other state funds and the interest thereon shall be deposited to the credit of the recovery fund.

Acts 1978, No. 514, § 1. Amended by Acts 1983, No. 379, § 1; Acts 1983, No. 552, § 2; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

§1462. Conditions for recovery; eligibility

A. Any person shall be eligible to seek recovery from the recovery fund if all of the following conditions have been met:

(1) The claimant has received final judgment in a court of competent jurisdiction in this state in any action wherein the cause of action was based on any violation prescribed in this Chapter.

(2) At the time the action was commenced, the claimant gave notice thereof to the Real Estate Commission by certified mail. When the Real Estate Commission receives notice of any action, as required, the commission may intervene, enter an appearance, file an answer, defend the action or take any action it deems appropriate on behalf and in the name of the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant.

(3) The claimant has made such judgment executory, and the return of the constable or sheriff showing that executing the same has made a return showing that no personal or real property of the judgment debtor can be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment.

(4) (a) The claimant has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by his search he has discovered no property or assets, or that he has discovered property and assets and that he has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment.

(b) The claimant has diligently pursued his remedies against all the judgment debtors and all persons liable to him in the transaction for which he seeks recovery from the recovery fund. If the recovery fund claim is based on the actions of a corporation, partnership, or limited liability company, claimant must have diligently pursued all possible remedies against the qualifying broker for the corporation, partnership, or limited liability company.

(c) If the judgment debtor has sought protection under the federal bankruptcy law, the claimant must provide a stamped copy of the proof of claim submitted to the bankruptcy court handling the case of the judgment debtor.

(5) Any amount recovered by the claimant from the judgment debtor, or from any other source, has been applied to the damages awarded by the courts.

(6) The right to recovery under this Subsection shall be forever barred unless application is made within one hundred eighty days from the date of the final judgment of all judicial proceedings, including appeals.

(7) After proper review, the commission may, after receiving written approval of the state attorney general's office, pay the claim or offer such compromise as is deemed just and equitable.

B. (1) The commission may, in lieu of meeting all the conditions for recovery set forth in Paragraphs (1) through (5) of Subsection A., allow the aggrieved party to submit a claim to the commission by notarized affidavit giving all the pertinent facts to the claim, when the claim is based on the actions of one or more licensees who have been sanctioned by the commission in an adjudicatory proceeding, the record of which corroborates the affidavit submitted by the claimant, and the amount of the claim does not exceed two thousand dollars.

(2) The right to recover under the provisions of this Subsection shall be forever barred unless application is made within one hundred eighty days from the effective date of the order issued by the commission pursuant to an adjudicatory proceeding pertaining to a claim submitted by a notarized affidavit, including appeals.

(3) Claims submitted by notarized affidavit may be paid by the commission after receiving written approval of the attorney general's office.

Acts 1978, No. 514, § 1. Amended by Acts 1983, No. 379, § 1; Acts 1986, No. 836, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1; Acts 1999, No. 452; § 2.

§1463. Payment from the fund

A. (1) Any claimant who meets all of the conditions prescribed in this Chapter, may apply to the Louisiana Real Estate Commission to cause payment to be made to such claimant from the recovery fund, in an amount equal to the unsatisfied portion of claimant's judgment or twenty thousand dollars, whichever is less, and only to the extent and amount reflected in the judgment as being actual damages.

(2) The commission shall not make any payment, be liable, cast in judgment, or pay any portion of any claim or judgment representing an award or claim for attorney fees, court costs, damages for physical or mental injury, medical expenses, loss of income or profits, punitive damages, or any other type of damages other than the actual damages suffered by the claimant.

B. Upon receipt by the claimant of the payment from the recovery fund, the claimant shall assign his additional right, title and interest in the judgment, to the extent of such payment to the commission and thereupon the commission shall be subrogated to the right, title and interest of the claimant; and any amount subsequently recovered on the judgment by the commission, to the extent of the commission's right, title and interest therein, shall be for the purpose of reimbursing the recovery fund.

C. Payments for claims arising out of the same transaction shall be limited in the aggregate to twenty thousand dollars regardless of the number of claimants or parcels of real estate involved in the transaction.

D. Payments for claims based upon judgment against any one licensed real estate broker or real estate salesperson shall not exceed in the aggregate fifty thousand dollars.

E. If at any time the monies in the recovery fund are insufficient to satisfy any valid claim, or portion thereof, the commission shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount of money has been deposited in the fund.

F. All payments and disbursements from the recovery fund shall be made by the commission upon a voucher signed by the chairman of the commission, or his designee.

G. Upon payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment against a licensed broker or salesperson, the license of such broker or salesperson shall be automatically revoked. A discharge of bankruptcy shall not relieve a person from the penalties and disabilities provided in this Section.

Acts 1978, No. 514, § 1. Amended by Acts 1986, No. 836, § 1; Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1.

§1464. Real estate research and education fund

A. There is created the Louisiana Real Estate Research and Education Fund. The Louisiana Real Estate Research and Education Fund, hereinafter referred to as the "education fund", is hereby established to promote the advancement and more efficient administration of the real estate industry and thereby serve to protect the public. Said funds are to be disbursed by voucher properly drawn and signed by the chairman of the Louisiana Real Estate Commission or his designee for the purposes hereinafter specified in Subsection C of this Section.

B. In addition to the licensee fees provided for in R.S. 37:1443, the commission may charge, upon initial issuance or renewal of every real estate broker's and real estate

salesperson's license, as well as any and all other types of licenses, if any issued by the commission after January 1, 1979, an amount not to exceed ten dollars per annum or twenty dollars for each two-year license period to be included in the education fund.

C. The commission, in its discretion, may use any and all monies in the education fund from whatever source derived for the following purposes:

- (1) To establish real estate chairs at Louisiana institutions of higher learning.
- (2) To contract for particular research projects in the field of real estate for the state of Louisiana.
- (3) To sponsor, conduct, contract for, and to underwrite any and all other research projects or real estate programs having to do with the advancement of the real estate field in Louisiana.

Acts 1978, No. 514, § 1. Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990.

§1465. Real estate franchises

No person, partnership, limited liability company, or corporation shall, as a franchisor, enter into a franchise agreement with a real estate broker in this state unless the franchisor has appointed a licensed real estate broker to act as its representative in this state and registered with the commission in the manner the commission requires by regulation.

Added by Acts 1983, No. 381, § 1. Amended by Acts, 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1.

§1466. Errors and omissions insurance; mandatory for all licensees

A. All active licensees licensed in accordance with the provisions of this Chapter are mandated to carry errors and omissions insurance to cover all activities contemplated under this Chapter.

B. The commission shall make the insurance mandated under this Section available to all licensees by contracting with an insurance provider having a current rating in A.M. Best of A or better for a group policy after competitive, sealed bidding and awarding such contract pursuant to requirements established by the commission. Such issuance and award shall be exempt from the provisions of Chapters 16 and 17 of Title 39 of the Louisiana Revised Statutes of 1950.

C. Any policy obtained by the commission must be available to all licensees with no right on the part of the insurance provider to cancel any licensee.

D. Licensees shall have the option of obtaining errors and omissions insurance independently, provided that the coverage contained in such policy complies with the minimum requirements established by the commission.

E. The commission shall determine the terms and conditions of coverage mandated under this Section, including but not limited to the minimum limits of coverage, the permissible deductible, and permissible exemptions.

F. Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty days prior to the annual renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the commission by the annual license renewal date by each active licensee who opts not to participate in the group insurance program administered by the commission.

G. Active licensees applying for inactive status and those licensees renewing their license while in an inactive status may do so without the required coverage mandated by this Section.

H. Should the commission be unable to obtain errors and omissions insurance coverage to insure all licensees who chose to participate in the group insurance program at a reasonable cost, not to exceed five hundred dollars for coverage, the insurance requirement mandated by this Section shall be void during the applicable contract year.

Added by Acts 1988, No. 849, § 1, eff. Jan. 1, 1990. Amended by Acts 1989, No. 655, § 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, § 1; Acts 1997, No. 845, § 1; Acts 2001, No. 924, § 1.

¹In subsec. B, R.S. 39:1481 et seq., and 39:1551 et seq., respectively.

§1467. Agency

A. Licensees shall provide the parties to a real estate transaction with an agency disclosure informational pamphlet, and where applicable, a dual agency disclosure form as mandated by R.S. 9:3897.

B. The commission may prescribe such agency disclosure forms or pamphlets as it deems necessary for the enforcement of this Section.

Added by Acts 1991, No. 354, § 1, eff. Jan. 1, 1992. Amended by Acts 1997, No. 32, § 1.

§1468. Psychologically impacted property

A. The fact or suspicion that a property might be or is psychologically impacted, such impact being the result of facts or suspicions, including but not limited to:

(1) That an occupant of real property is, or was at any time suspected to be, infected, or has been infected with Human Immuno-deficiency Virus or diagnosed with Acquired

Immune Deficiency Syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(2) That the property was, or was at any time suspected to have been, the site of a homicide, or other felony, or a suicide; is not a material fact or material defect regarding the condition of real estate that must be disclosed in a real estate transaction.

B. No cause of action shall arise against an owner of real estate or his or her agent for the failure to disclose to the transferee that the transferred property was psychologically impacted as defined in Subsection A.

Added by Acts 1991, No. 336, § 1.

§1469. Offender notification

A. Every written lease or rental agreement executed by any licensee for residential immovable property and every written contract for sale of residential immovable property shall contain a notice of the availability to the public of access to a statewide database disclosing the locations of individuals required to register pursuant to R.S. 15:540 et seq. The notice shall include the telephone number and internet site for the statewide database.

B. Upon delivery of the notice to the lessee or transferee of the residential immovable property, the lessor, seller, broker, or licensee is not required to provide any information in addition to that contained in the notice regarding proximity of registered sex offenders. The information in the notice shall be deemed to be adequate to inform the lessee or transferee about the existence of a statewide database of the locations of registered sex offenders and information from the database regarding those locations. The information in the notice shall not give rise to any cause of action against the disclosing party by a registered sex offender or other parties to the transaction.

C. This Section shall apply only to written agreements and contracts that are entered into by the parties on or after January 1, 2002.

Acts 2001, No. 178, §1.

§1470. Mold informational pamphlet; liability of licensees

A.(1) By April 1, 2004, the commission shall, by rule, in accordance with the Administrative Procedure Act, approve a mold informational pamphlet, which may be distributed to buyers by licensees in connection with any real estate transaction entered into on and after July 1, 2004.

(2) If the licensee delivers the mold informational pamphlet to the buyer, he shall do so at or before the time a lease, rental agreement, or contract for sale is entered into by the parties.

B. If the licensee delivers the mold informational pamphlet to the buyer, the licensee is not required to provide any additional information concerning mold. The information contained in the mold informational pamphlet shall be deemed to be adequate to inform the buyer regarding common mold-related hazards that can affect real property.

C. The licensee shall not be held liable for any error, inaccuracy, or omission of any information contained in the mold informational pamphlet pursuant to this Section, if either of the following applies:

(1) The error, inaccuracy, or omission was not within the personal knowledge of the licensee.

(2) The error, inaccuracy, or omission was based on information provided to the licensee by the commission, a public agency, or by other persons providing relevant information by delivery of a report or opinion prepared by an expert dealing with matters within the relevant scope of his professional license, and ordinary care was exercised by the licensee in obtaining and transmitting such information.

D. Nothing in this Section shall alter or affect the existing disclosure duties of any party to a real estate transaction, or their agents, including but not limited to the duty of a licensee to disclose any known material defect regarding the condition of the property.

Acts 2003, No. 1123, §1.

AGENCY RELATIONS IN REAL ESTATE TRANSACTIONS (LSA-R.S.9:3891-3899)

§ 3891. DEFINITIONS

(1) "Agency" means a relationship in which a real estate broker or licensee represents a client by the client's consent, whether express or implied, in an immovable property transaction.

(2) "Broker" means any person licensed by the Louisiana Real Estate Commission as a real estate broker.

(3) "Brokerage agreement" means an agreement for brokerage services to be provided to a person in return for compensation or the right to receive compensation from another.

(4) "Client" means one who engages the professional advice and services of a licensee as his agent.

(5) "Commission" means the Louisiana Real Estate Commission.

(6) (a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written

request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

(i) The client permits the disclosure by word or conduct.

(ii) The disclosure is required by law or would reveal serious defect.

(iii) The information becomes public from a source other than the licensee.

(b) Confidential information shall not be considered to include material information about the physical condition of the property.

(c) Confidential information can be disclosed by a designated agent to his broker for the purpose of seeking advice or assistance for the benefit of the client.

(7) "Customer" means a person who is not being represented by a licensee but for whom the licensee is performing ministerial acts.

(8) "Designated agency" means a contractual relationship between a broker and a client under which one or more licensees affiliated with the broker are designated as agents of the client.

(9) "Designated agent" means a licensee named by a broker as the agent of a client.

(10) "Dual agency" means an agency relationship in which a licensee is working with both buyer and seller or both landlord and tenant in the same transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller of property that he owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.

(11) "Licensee" means any person who has been issued a license by the commission as a real estate salesperson or a real estate broker.

(12) "Ministerial acts" means those acts that a licensee may perform for a person that are informative in nature. Examples of these acts include but are not limited to:

(a) Responding to phone inquiries by persons as to the availability and pricing of brokerage services.

(b) Responding to phone inquiries from a person concerning the price or location of property.

(c) Conducting an open house and responding to questions about the property from a person.

- (d) Setting an appointment to view property.
 - (e) Responding to questions from persons walking into a licensee's office concerning brokerage services offered or particular properties.
 - (f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property.
 - (g) Describing a property or the property's condition in response to a person's inquiry.
 - (h) Completing business or factual information for a person represented by another licensee on an offer or contract to purchase.
 - (i) Showing a person through a property being sold by an owner on his or her own behalf.
 - (j) Referral to another broker or service provider.
- (13) "Person" means and includes individuals and any and all business entities, including but not limited to corporations, partnerships, trusts and limited liability companies, foreign or domestic.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998. Amended by Acts 1999, No. 452, § 1.

§ 3892. RELATIONSHIPS BETWEEN LICENSEES AND PERSONS

Notwithstanding the provisions of Civil Code Articles 2985 through 3032 or any other provisions of law, a licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a designated agent unless there is a written agreement between the broker and the person providing that there is a different relationship or the licensee is performing only ministerial acts on behalf of the person.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998.

§ 3893. DUTIES OF LICENSEES REPRESENTING CLIENTS

A. A licensee representing a client shall:

- (1) Perform the terms of the brokerage agreement between a broker and the client.
- (2) Promote the best interests of the client by:
 - (a) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and upon terms otherwise acceptable to the client.
 - (b) Timely presenting all offers to and from the client, unless the client has waived this duty.

(c) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.

(3) Exercise reasonable skill and care in the performance of brokerage services.

B. A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants.

C. A licensee representing a buyer or tenant client does not breach a duty or obligation to that client by working on the basis that the licensee shall receive a higher fee or compensation based on a higher selling price.

D. A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.

E. Nothing in this Section shall be construed as changing a licensee's legal duty as to negligent or fraudulent misrepresentation of material information.

F. Nothing in this Chapter or in Chapter 17 of Title 37 shall be construed as to require agency disclosure with regard to a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998. Amended by Acts 1999, No. 452 § 1.

§ 3894. LICENSEES RELATIONSHIP WITH CUSTOMERS

A. Licensees shall treat all customers honestly and fairly and when representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts. Performing those ministerial acts shall not be construed in a manner that would violate the brokerage agreement with the client, and performing those ministerial acts for the customer shall not be construed in a manner as to form a brokerage agreement with the customer.

B. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee's client or client's agent and the licensee did not have actual knowledge that the information was false.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998.

§ 3895. TERMINATION OF AGENCY RELATIONSHIP

Except as may be provided in a written agreement between the broker and the client, neither a broker nor any licensee affiliated with the broker owes any further duties to the client after termination, expiration, or completion of performance of the brokerage

agreement, except to account for all monies and property relating to the transaction and to keep confidential all confidential information received during the course of the brokerage agreement.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998.

§ 3896. COMPENSATION; AGENCY RELATIONSHIP

The payment or promise of payment of compensation to a broker is not determinative of whether an agency relationship has been created.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998.

§ 3897. DUAL AGENCY

A. A licensee may act as a dual agent only with the informed written consent of all clients. Informed consent shall be presumed to have been given by any client who signs a dual agency disclosure form prepared by the commission pursuant to its rules and regulations. The form prepared by the commission shall include the following language:

"What a licensee shall do for clients when acting as a dual agent:

- (1) Treat all clients honestly.
- (2) Provide information about the property to the buyer or tenant.
- (3) Disclose all latent material defects in the property that are known to the licensee.
- (4) Disclose financial qualification of the buyer or tenant to the seller or landlord.
- (5) Explain real estate terms.
- (6) Help the buyer or tenant to arrange for property inspections.
- (7) Explain closing costs and procedures.
- (8) Help the buyer compare financing alternatives.
- (9) Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer."

B. A licensee shall not disclose to clients when acting as a dual agent:

- (1) Confidential information that the licensee may know about either of the clients, without that client's permission.

(2) The price the seller or landlord will take other than the listing price without the permission of the seller or landlord.

(3) The price the buyer or tenant is willing to pay without the permission of the buyer or tenant.

C. The written consent required in Subsection A of this Section shall be obtained by a licensee from the client at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent.

D. No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this Section, and the dual agent does not terminate any agency relationship by making the allowed or required disclosures.

E. In the case of dual agency, each client and licensee possess only actual knowledge and information. There shall be no imputation of knowledge or information among or between the clients, brokers, or their affiliated licensees.

F. In any transaction, a licensee may without liability withdraw from representing a client who has not consented to a disclosed dual agency. The withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions.

When a withdrawal occurs, the licensee shall not receive a referral fee for referring a client to another licensee unless written disclosure is made to both the withdrawing client and the client that continues to be represented by the licensee.

G. A licensee shall not be considered as acting as a dual agent if the licensee is working with both buyer and seller, if the licensee is the seller of property he owns, or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998. Amended by Acts 1999, No. 452, § 1.

§ 3898. SUBAGENCY

Subagency can only be created by a written agreement. A licensee is not considered to be a subagent of a client or another broker solely by reason of membership or other affiliation by the broker in a multiple listing service or other similar information source.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998.

§ 3899. VICARIOUS LIABILITY

A client shall not be liable for the acts or omissions of a licensee in providing brokerage services for or on behalf of the client.

Added by Acts 1997, No. 31, § 1, eff. March 1, 1998.